

### **REMARKS**

In response to the Office Action dated August 29, 2007, Applicant respectfully requests the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 27, 28 and 33-43 remain pending. Claims 27 and 37 have been amended. Claims 29 and 44 have been canceled, without prejudice or disclaimer.

In the changes made by the current amendment, ~~deletions are shown by strikethrough~~, and additions are underlined or enclosed in [[double brackets]].

#### *Claims 27, 28 and 33-43 Are In Condition For Allowance*

Claims 27, 28 and 33-43 presently stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,093,180 to Elsberry in view of U.S. Patent No. 4,412,832 to Kling et al. Applicants respectfully disagree.

Initially, Applicants submit that it would not have been obvious to one of skill in the art to provide a kit including the pump, tubing and catheter of Elsberry with the introducer of Kling at least because it is not apparent from the reference that the Elsberry catheter would be delivered to the desired site via an introducer. Elsberry discusses surgical placement of the catheter tip.

However, in an effort to expedite allowance of the present application, Applicants have amended independent Claims 27 and 37 to further distinguish the proposed combination. In particular, Claim 27 has been amended to recite a system including, among other components, a catheter that includes an elongated tube having a closed distal end. A distal end portion of the elongated tube includes a plurality of fluid exit holes. A distinct porous member (or tubular membrane) is enclosed within the elongated tube.

The porous tip of the Elsberry catheter is not enclosed within the elongated tube. Moreover, it is the porous tip – and not the tube – of Elsberry that defines the fluid exit holes, contrary to the claimed catheter. Applicants submit it would not have been obvious to enclose the porous tip of Elsberry within a closed-ended tube at least because adjustment of the exposed portion of the porous tip is desired and, it is submitted, is crucial to the proper operation of the Elsberry catheter.

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For at least these reasons, Applicants submit that Claims 27 and 37 are allowable over the proposed combination of Elsberry and Kling. Claims 28, 33-36 and 38-43 depend from one of Claims 27 and 37. These claims are allowable, not only because they depend from an allowable claim, but upon their own merit as well. Reconsideration and allowance of Claims 27, 28 and 33-43 are respectfully requested.

*No Disclaimers or Disavowals*

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

*Co-Pending Applications of Assignee*

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

<b>Serial Number</b>	<b>Title</b>	<b>Filed</b>
10/420,133	CATHETER FOR UNIFORM DELIVERY OF MEDICATION	April 18, 2003
10/828,923	CATHETER FOR UNIFORM DELIVERY OF MEDICATION	April 21, 2004
11/364,767	CATHETER FOR UNIFORM DELIVERY OF MEDICATION	February 28, 2006

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CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 29, 2007

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